

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13455 of 2023

Applicant :- Sandeep Nishad

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And 3 Others

Counsel for Applicant :- Afaq Zaki Khan, Alimulla Khan, Mohammad Asad Mahmood

Counsel for Opposite Party :- G.A., Ravindra Kumar Yadava

Hon'ble Brij Raj Singh, J.

1. Heard learned counsel for the applicant, Sri Ravindra Kumar Yadav, learned counsel for the applicant, Sri Ran Vijay Singh, learned A.G.A. for the State and perused record.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Special Session Trial No.50 of 2019, Case Crime No.123 of 2018 under Section 376 (D), 506 IPC and 3/4 of POCSO Act, Section 3 (2) (V) SC/ST Act, PS Rajesultanpur, district Ambedkar Nagar.

3. Learned counsel for the applicant has submitted that FIR has been lodged by the father of the prosecutrix in which the allegation of rape is levelled. It has been submitted that though the incident took place on 4.7.2018, but the FIR has been lodged on 12.7.2018. It has been submitted that after lodging FIR, the medical test was conducted and thereafter, DNA report was sought from the Laboratory. After obtaining DNA report, it was found that DNA sample of applicant is not matching with the sample of prosecutrix and thereafter, final report was filed on 22.8.2019. However, the chargesheet was filed against the co-accused Ravindra Nishad who has been granted bail by this Court on 15.6.2021 in Bail No.3307 of 2020. It has been further submitted that the statement of prosecutrix has been recorded before the Trial Court and in her cross-examination she has deposed that she was sleeping under the thatch (Chhapper) where her mother, younger brother Arun Kumar and sister Neelam were sleeping. She has further deposed that all five members were sleeping at the same place. Learned counsel for the applicant has further submitted that it is strange that five persons were sleeping at one place and no alarm was raised by the prosecutrix and no one had opposed. He has submitted that that it appears that it is a case of consent and the applicant has been falsely implicated. He has further submitted that the

applicant has been summoned under Section 319 CrPC on the statement of the prosecutrix. He has further submitted that earlier, he had filed petition being Misc. Bench No.21824 of 2018 (Ravindra Nishad & another. Vs. State of U.P. and others.) before this Court that this Court had granted interim order on 5.3.2019, a copy of the said order is annexed to the bail application as Annexure No.3. He has further submitted that the co-accused Ravindra Nishad has been granted by this Court and the case of the applicant is at par with the co-accused because the allegation of rape is also levelled by the prosecutrix against the co-accused who has been granted bail. He has further submitted that the applicant has no criminal history and he is in Jail since 2.9.2023.

4. On the other hand, learned counsel for the complainant has opposed the bail and has submitted that the statement of prosecutrix has been recorded before the Trial Court and she has levelled allegation of rape against the applicant, therefore, the applicant is not entitled for bail. Similarly, learned A.G.A. has opposed the prayer for bail but could not dispute the fact that co-accused Ravindra Nishad has been granted bail and case of the applicant is at par with the co-accused.

5. Considering over all facts and circumstances of the case, the argument that co-accused Ravindra Nishad has been granted bail and case of the applicant is at par with the co-accused and DNA sample is not matching with the DNA sample of prosecutrix, it is a fit case for bail.

6. Let the applicant, Sandeep Nishad be released on bail in the above case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the

court on the date fixed in such proclamation, then the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

7. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The Trial Court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

Order Date :- 17.11.2023
Rajneesh JR-PS)